



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,755	11/21/2003	Jeff Wagner	7678.810	1447

7590

05/04/2005

Rick D. Nydegger
WORKMAN, NYDEGGER & SEELEY
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111

EXAMINER

STOKES, CANDICE CAPRI

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/718,755	WAGNER ET AL.	
	Examiner	Art Unit	
	Candice C. Stokes	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-29 is/are allowed.
- 6) ☒ Claim(s) 1-16, 30 and 32 is/are rejected.
- 7) ☒ Claim(s) 17-24 and 31 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/23/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11, 14 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Rubin (USPN 6,482,009). Rubin discloses a root canal testing implement and method using an endodontic device 10 for detecting moisture within a root canal comprising an endodontic cone as shown in Fig. 2. “The paper point of the invention is preferably formed from a piece of triangularly shaped absorbent paper 20, as shown in Fig. 1” (col. 4, lines 1-3). Furthermore, “the paper point of the invention is preferably pre-impregnated at its lower point or tip portion with a pH indicator region 22” (col. 4, lines 5-7). “The pH indicator, by change of color, will present information as to whether or not any moisture is present in the root canal and, secondly, whether or not the moisture is a positive pH or negative pH” (see abstract). As to Claim 14, Rubin discloses, “some of the specific pH indicators which can be used include, for example, those base testing pH indicators, such as phenolphthalein” (col. 4, lines 41-43).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 16, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rubin in view of Eakin (USPN 6,559,351). Rubin discloses an endodontic device 10 for detecting moisture within a root canal comprising an endodontic cone as shown in Fig. 2 formed of water absorptive material and a moisture sensitive chemical indicator. However, Rubin does not disclose the moisture sensitive indicator comprising cobalt salt applied to the water absorptive material that changes color when moistened with water. Eakin teaches how cobalt salt may be used as a chemical indicator applied to a water absorptive material that changes color when moistened with water (see col. 3, lines 13-16). As to Claim 2, Rubin discloses "the paper point of the invention is preferably formed from a piece of triangularly shaped absorbent paper 20 as shown in Fig. 1" (col. 4, lines 1-3). Regarding Claim 5, Rubin teaches a chemical indicator (in this case a pH indicator), which would change one color when moistened with water, but, it is inherent that the chemical indicator would change a different color when moistened with sodium hypochlorite because water has a neutral pH and sodium hypochlorite is a base. As to Claim 16, in a method disclosed by Rubin "a dentist or technician can take a small piece of paper, roll it into a thin small diameter roll having a very small diameter lower end. The roll can then be dipped into a liquid (in this case a pH) indicator to impregnate the paper roll at least at the tip. Time must be allotted to any liquid carrier on the paper roll to dry" (col. 4, lines 26-31). It

Art Unit: 3732

would have been obvious to one having ordinary skill in the art at the time of the invention to incorporate the cobalt salt instead of pH as the chemical indicator used for detecting moisture as taught by Eakin into the endodontic device disclosed by Rubin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding Claims 3,4, and 9 Rubin and Eakin teach the claimed invention except for the cobalt salt comprising cobalt fluoride, cobalt iodide, or cobalt sulfate and cobalt chloride. It would have been obvious to one having ordinary skill in the art at the time of the invention to use any cobalt salt , since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As to Claims 6-7 and 10, Rubin and Eakin teach the claimed invention except for the endodontic device initially being blue and changing to pink when moistened with water and black when moistened with sodium hypochlorite. It would have been an obvious matter of design choice to provide the desired colored changes or any color changes as long as the colors are distinguishable from one another, since such a modification would have involved a mere change in color. A change in color is generally recognized as being within the level of ordinary skill in the art.

2) Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rubin. Rubin disclosed that claimed invention except for the pH changing material as claimed in the above-mentioned claims. It would have been obvious to one having ordinary skill in the art at

Art Unit: 3732

the time of the invention to use any pH changing material , since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

Claims 17-24 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Claims 25-29 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candice C. Stokes whose telephone number is (571) 272-4714. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Candice C. Stokes


Cary E. O'Connor
Primary Examiner